

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

<u>IN THE MATTER OF:</u>)	
)	
Kronospan, LLC)	
Eastaboga, Calhoun County, Alabama)	CONSENT ORDER NO. <u>16-XXX-CAP</u>
)	
<u>Air Facility ID No. 301-0079</u>)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department” and/or “ADEM”) and Kronospan, LLC, (hereinafter, “the Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. Kronospan, LLC, (hereinafter, the “Permittee”) is the owner and/or operator of a medium density fiber board facility (hereinafter, the “Facility”), Air Division Facility No. 301-0079, located in Eastaboga, Calhoun County, Alabama.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code §§ 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. On January 23, 2008, the Department issued Air Permit No. X007 (hereinafter, "Permit X007") to the Permittee authorizing the operation/construction of fiberboard manufacturing processes controlled by a regenerative thermal oxidizer (hereinafter, the "MDF process").

5. Permit X007, Proviso No. 47 states: "The permittee shall comply with the applicable notification requirements in 40 CFR §63.2280, reporting requirements in 40 CFR §63.2281 and Table 9 to Subpart DDDD, and recordkeeping requirements in 40 CFR §§63.2282 and 63.2283."

6. On January 23, 2008, the Department issued Air Permit No. X026 (hereinafter, "Permit X026") to the Permittee authorizing the operation/construction of a 122.84 MMBtu/hr wood-fired thermal oil heater equipped with selective non-catalytic reduction and controlled by a common dry electrostatic precipitator (hereinafter, the "K4").

7. Permit X026, Proviso No. 39 states: "The permittee shall comply with the applicable notification, reporting, and recordkeeping requirements specified in 40 CFR §60.7 and 40 CFR §60.49b."

8. On April 24, 2014, the Department issued Air Permit No. X021 (hereinafter, "Permit X021") to the Permittee authorizing the operation/construction of a formalin production unit (hereinafter, the "Formalin Unit").

9. Permit X021, Proviso No. 28 states: "A written report shall be submitted to the Air Division on a semi-annual basis, postmarked or delivered no later than July 31st and January 31st of each year, for the reporting periods of January 1st through June 30th and July 1st through December 31st, respectively, certifying that the daily catalytic oxidizer observations were completed as required and noting the nature and date of any episodes of visible emissions observed and corrective or emission related maintenance actions taken."

10. Permit X021, Proviso No. 44 states: "A Notification of Compliance Status (NCS) including the information specified in 40 CFR §63.152(b) of Subpart G shall be submitted within 150 days after startup of this unit."

11. Permit X021, Proviso No. 45 states: "A Notification of Compliance Status (NCS) including the information specified in 40 CFR §63.182(c) of Subpart H shall be submitted within 90 days after startup of this unit."

12. On April 24, 2014, the Department issued Air Permit No. X022 (hereinafter, "Permit X022") to the Permittee authorizing the operation/construction of two (2) 146,140 gallon methanol storage tanks vented to a catalytic oxidizer (hereinafter, the "Methanol Storage").

13. Permit X022, Proviso No. 28 states: "A written report shall be submitted to the Air Division on a semi-annual basis, postmarked or delivered no later than July 31st and January 31st of each year, for the reporting periods of January 1st through June 30th and July 1st through December 31st, respectively, certifying that the daily catalytic oxidizer observations were completed as required and noting the nature and date of any episodes of visible emissions observed and corrective or emission related maintenance actions taken."

14. Permit X022, Proviso No. 37 states: "A Notification of Compliance Status (NCS) including the information specified in 40 CFR §63.152(b) of Subpart G shall be submitted within 150 days after startup of this unit."

15. On May 28, 2015, the Department issued Air Permit No. X023 (hereinafter, "Permit X023") to the Permittee authorizing the operation/construction of three (3) 89,600 gallon formalin storage tanks vented to a catalytic oxidizer (hereinafter, the "Formalin Storage").

16. Permit X023, Proviso No. 31 states: "A written report shall be submitted to the Air Division on a semi-annual basis, postmarked or delivered no later than July 31st and January 31st

of each year, for the reporting periods of January 1st through June 30th and July 1st through December 31st, respectively, certifying that the daily catalytic oxidizer observations were completed as required and noting the nature and date of any episodes of visible emissions observed and corrective or emission related maintenance actions taken.”

17. Permit X023, Proviso No. 40 states: “A Notification of Compliance Status (NCS) including the information specified in 40 CFR §63.152(b) of Subpart G shall be submitted within 150 days after startup of this unit.”

18. On May 28, 2015, the Department issued Air Permit No. X024 (hereinafter, “Permit X024”) to the Permittee authorizing the operation/construction of the resin production unit (hereinafter, the “Resin Unit”).

19. Permit X024, Proviso No. 33 states: “A written report shall be submitted to the Air Division on a semi-annual basis, postmarked or delivered no later than July 31st and January 31st of each year, for the reporting periods of January 1st through June 30th and July 1st through December 31st, respectively, certifying that the daily catalytic oxidizer observations were completed as required and noting the nature and date of any episodes of visible emissions observed and corrective or emission related maintenance actions taken.”

20. Permit X024, Proviso No. 41 states: “Performance testing according to the applicable procedures of 40 CFR §§63.1413 and 63.1414 of Subpart OOO shall be performed.”

21. Permit X024, Proviso No. 46 states: “A Notification of Compliance Status (NCS) including the information specified in 40 CFR §63.1417(e) of Subpart OOO shall be submitted within 150 days after startup of this unit.”

DEPARTMENT’S CONTENTIONS

22. The Permittee failed to timely submit the Semiannual Compliance Report (SCR) in

violation of Permit X007, Proviso No. 22. The report was due January 30, 2016, and was received on February 12, 2016.

23. The Permittee failed to timely submit the excess emissions report in violation of Permit X026, Proviso No. 39. The report was due January 30, 2016, and was received on February 12, 2016.

24. The Permittee failed to timely submit the Semiannual Monitoring Report (SMR) in violation of Permit X021, Proviso No. 28. The report was due January 31, 2016, and was received on June 24, 2016.

25. The Permittee failed to timely submit the NCS in violation of Permit X021, Proviso No. 44. The NCS was due April 4, 2016, and received on June 24, 2016.

26. The Permittee failed to timely submit the NCS in violation of Permit X021, Proviso No. 45. The NCS was due February 2, 2016, and was received on June 24, 2016.

27. The Permittee failed to timely submit the SMR in violation of Permit X022, Proviso No. 28. The report was due January 31, 2016, and was received on June 24, 2016.

28. The Permittee failed to timely submit the NCS in violation of Permit X022, Proviso No. 37. The NCS was due April 4, 2016, and was received on June 24, 2016.

29. The Permittee failed to timely submit the SMR in violation of Permit X023, Proviso No. 31. The report was due January 31, 2016, and was received on June 24, 2016.

30. The Permittee failed to timely submit the NCS in violation of Permit X023, Proviso No. 40. The NCS was due January 31, 2016, and was received on June 24, 2016.

31. The Permittee failed to timely submit the SMR in violation of Permit X024, Proviso No. 33. The report was due January 31, 2016, and was received on June 24, 2016.

32. The Permittee failed to accomplish the following in violation of Permit X024,

Proviso No. 41:

- a. Submit test protocol 90 days prior to testing. The test was conducted on January 19-20, 2016, and the protocol was submitted on January 8, 2016.
- b. Submit test notification 30 days prior to testing. The test was conducted on January 19-20, 2016, and the notification was received on January 8, 2016.
- c. Follow the proper procedure for the use of an alternative test method. The request for use of alternative test methods was submitted to EPA within a week of the test date and was approved (with caveats) by EPA on March 17, 2016, which was after the test had been conducted.
- d. Complete an approvable compliance test by the applicable date (January 30, 2016). As of August 8, 2016, an approvable compliance test has not been received.
- e. Submit the compliance test report within 60 days of the completion of the testing event. The testing of the process was conducted on January 19-20, 2016, and the reports were received on April 28, 2016, after the Air Division requested them. The report, when submitted, was not complete, as it lacked the results from the formaldehyde and carbon monoxide testing. That report was received May 16, 2016, electronically, upon Air Division inquiry.

33. The Permittee failed to timely submit the NCS in violation of Permit X024, Proviso No. 46. The NCS was due January 30, 2016, and an incomplete NCS was received on June 24, 2016.

34. Pursuant to Ala. Code §22-22A-5(18)c., *as amended*, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the

standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: The Department considers the Permittee's failure to complete and submit the appropriate reports and Notices of Compliance Status and failure to complete the testing notification and procedures appropriately to be serious violations.

B. THE STANDARD OF CARE: The Permittee did not exhibit the standard of care commensurate with the requirements of the Alabama Pollution Control Act and the ADEM Administrative Code by failing to complete and submit the appropriate reports and Notices of Compliance Status and by not completing the testing notification and procedures appropriately.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is not aware of any economic benefits the Permittee may have incurred as a result of these alleged violations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There are no known environmental effects to mitigate as a result of the alleged violations.

E. HISTORY OF PREVIOUS VIOLATIONS: There have been no ADEM Air violations documented at the Facility within the last five years.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty to resolve this matter amicably without incurring the unwarranted expense of litigation.

35. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement and, based upon the foregoing and attached contentions, has concluded that the civil penalty herein is appropriate (*See* "Attachment A", which is made a part of the Department's Contentions).

36. The Department neither admits nor denies the Permittee's contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

PERMITTEE'S CONTENTIONS

37. The Permittee neither admits nor denies the Department's contentions. The Permittee consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code §22-22A-5(18)c., *as amended*,

as well as the need for timely and effective enforcement, and has determined that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this ORDER with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$40,000.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

C. The Permittee agrees to comply with the terms, limitations, and conditions of the Permits and the Department's regulations immediately upon the effective date of this Consent Order and every day thereafter.

D. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

E. The parties agree that this Consent Order, subject to the terms of these presents and subject to provisions otherwise provided by statute, is intended to operate as a full resolution of

the violations which are cited in this Consent Order.

F. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The Department and the Permittee agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the Facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

I. The Department and the Permittee agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

J. The Department and the Permittee agree that this Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

K. The Department and the Permittee agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

L. The Department and the Permittee agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

M. The Department and the Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.

N. The Department and the Permittee agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

KRONOSPAN, LLC

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


(Signature of Authorized Representative)

Lance R. LeFleur
Director

HANS OBERMAIER
(Printed Name)

Date Executed

OPERATIONS DIRECTOR
(Printed Title)

11. OCT 2016
Date Signed

Attachment A

Kronospan, LLC
Eastaboga, Calhoun County
ADEM Air Facility ID No. 301-0079

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Failing to submit or submitting late reports	6	\$2,500	\$1,000		
Failing to submit Notices of Compliance Status	5	\$2,000	\$1,000		
Failing to follow appropriate testing and notification and procedures	1	\$10,000	\$4,000		
					Total of Three Factors
TOTAL PER FACTOR		\$35,000	\$15,000		\$50,000

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	-\$10,000
Total Adjustments (+/-) <i>Enter at Right</i>	-\$10,000

Economic Benefit (+)	
Amount of Initial Penalty	\$50,000
Total Adjustments (+/-)	-\$10,000
FINAL PENALTY	\$40,000

Footnotes

* See the "Department's Contentions" portion of the Order for a detailed description of each violation and the penalty factors.